

JEFFERSON COUNTY RETAIL FOOD ESTABLISHMENT, MOBILE FOOD
ESTABLISHMENT, TEMPORARY FOOD ESTABLISHMENT AND/OR BED AND
BREAKFAST ESTABLISHMENT
ORDINANCE NO. 7-2016
In JEFFERSON COUNTY, Indiana

The purpose of this ordinance is to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented. It establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for Retail Food Establishment, Temporary Food Establishment, Mobile Food Establishment and/or Bed and Breakfast Establishment plan reviews, permits, inspections, and employee restrictions.

This ordinance defines Bed and Breakfast Establishment, Conflict of Interest, Jefferson County Health Department, Jefferson County Official, Hazard Analysis Critical Control Point, Health Officer, Hearing Officer, Imminent Health Hazard, Inspection Report, Operator, Order, Permit, Person, Retail Food Establishment, Mobile Food Establishment, Temporary Food Establishment; requires construction and/or alteration plans; requires a Permit and payment of Permit fees for the operation of Bed and Breakfast Establishment Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment; prohibits sale of adulterated, unwholesome, or misbranded food; regulates inspection of such establishments; provides for compliance and the enforcement of this ordinance; provides penalties for violations of said ordinance; and incorporates by reference Indiana Code(s) (IC) 16-42-1, IC 16-42-2, IC 16-42-5, IC 16-42-5.2, Senate Enrolled Act (SEA) 190 and Indiana State Department of Health Rule(s) 410 Indiana Administrative Code (IAC) 7-15.5, 410 IAC 7-24, 410 IAC 7-21-47, 410 IAC 7-22 and 410 IAC 7-23.

The Jefferson County Health Department is hereby authorized to issue Bed And Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment permits, collect permit fees and penalties, perform inspections, hold hearings, order or otherwise compel correction of violations of this ordinance, and is otherwise authorized to perform all actions necessary for the administration and enforcement of this ordinance.

Be it ordained by the Board of Commissioners of Jefferson County, State of Indiana, that:

Section A: Definitions

Bed and Breakfast Establishment (as defined in 410 IAC 7-15.5) means an Operator occupied residence that:

- (a) provides sleeping accommodations to the public for a fee;
- (b) has no more than fourteen (14) guest rooms;
- (c) provides breakfast to its guests as part of the fee; and
- (d) provides sleeping accommodations for no more than thirty (30) consecutive days to a particular guest.

Conflict of Interest (derived from 68 IAC 9-1-1(b)(2)) means a situation in which the private financial interest of Jefferson County Official, Jefferson County Official's spouse, ex-spouse, siblings, in-laws, children and/or emancipated child, may influence the Jefferson County Official's judgment in the performance of a public duty.

Jefferson County Health Department means the local health department in Jefferson County or authorized representative having jurisdiction over a Bed and Breakfast Establishment, Retail Food Establishment Mobile Food Establishment and/or Temporary Food Establishment.

Jefferson County Official means any Official of Jefferson County, Indiana.

Hazard Analysis Critical Control Point (HACCP) Plan (as defined in 410 IAC 7-24) means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

Health Officer means the person, appointed as specified in IC-16-20-2-16, or his/her duly authorized representative, as specified in IC 16-2-1-14, who may conduct inspections and make a final decision on an enforcement action.

Hearing Officer means an individual or panel of individuals acting in the capacity of a Hearing Officer in proceedings. The Hearing Officer is not the Health Officer or any other employee of the Jefferson County Health Department. (Examples of Hearing Officer could be the Jefferson County Health Board, a subcommittee of Jefferson County Health Board, a subcommittee of health professionals from the community or other non-bias third party appointed by the Health Board.)

Home Based Vendor means an individual who:

- (a) has made a non-potentially hazardous food product in their primary residence
- (b) is selling the food product made, only at a roadside stand or at a farmers 'market;
- (c) complies with IC 16-42-5-29

Imminent Health Hazard means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness [e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials].

Inspection Report means the document prepared by the Jefferson County Health Department that is completed as the result of the inspection and provided to the Operator.

Mobile Food Establishment

“Mobile Food Establishment” means a Retail Food Establishment that is: wheeled, on skids, mounted on a vehicle, mounted on a marine vessel or otherwise readily movable such as a pushcart or trailer.

Operator means the person who has a primary oversight responsibility for operation of the establishment through ownership, or lease or contractual agreement, and who is responsible for the storage, preparation, display, transportation or serving of food to the public.

Order (derived from IC 4-21.5-1-9) means a Jefferson County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific Persons. The term includes a permit.

Permit means the document issued by the Jefferson County Health Department that authorizes a Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment.

Person means an association; a corporation; an individual; partnership; or other legal entity, government, or governmental subdivision or agency.

Retail Food Establishment

- (a) means any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food.
- (b) The term does not include the following:
 - 1. A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests.
 - 2. A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:
 - a. The individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and
 - b. The gathering is for a purpose of the organization. Gatherings for the purpose of the organization include funerals, wedding receptions,

christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

3. A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation.
4. A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property.
5. Except for food prepared by a for-profit entity, a venue of the sale of food prepared for an organization:
 - a. That is organized for:
 - i. Religious purposes; or
 - ii. Educational purposes in a nonpublic educational setting;
 - b. That is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - c. That offers the food for sale to the final consumer at an event held for the benefit of the organization; unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.
6. Except for food prepared by a for-profit entity, and Indiana nonprofit organization that:
 - a. Is organized for civic, fraternal, veterans, or charitable purposes;
 - b. Is exempt from taxation under Section 501 of the Internal Revenue Code; and
 - c. Offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than fifteen (15) days in a calendar year.
7. An individual vendor of a farmer's market or roadside stand if the individual meets the requirements of IC 16-42-5-29.
8. The holder of a farm winery permit under IC 7.1-3-12-5 or a brewer's permit under IC 7.1-3-2-7(5) if the requirements of IC 16-42-5-30 are met.

Temporary Food Establishment means a Retail Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration with the approval of the organizers of the event or celebration.

Section B: Applications

Application: A Person desiring to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment shall submit to the Jefferson County Health Department a written application for a Permit on a form provided by the Jefferson County Health Department.

Application Late Fees: A late fee for failure to obtain a permit for any Temporary Food Establishment at least seven (7) days prior to the event shall be assessed a \$50.00 late fee.

Organizer's Application: Any organizer of any single event or celebration shall submit to the Jefferson County Health Department an Organizer's Application, provided by the Jefferson County Health Department, thirty (30) days prior to the scheduled event or celebration.

Exempt Organization Application: Any exempt organization as defined under Retail Food Establishment shall submit an exempt organization application, provided by Jefferson County Health Department, along with Tax Identification Number at least seven (7) days prior to event or celebration.

Application Denial: If an application for a plan review and/or Permit to operate a Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment is denied, the Jefferson County Health Department shall provide the applicant with a notice that includes:

- (1) The specific reasons and rule citations for the application and/or Permit denial;
- (2) The actions, if any, that the applicant must take to qualify for the application and/or Permit; and
- (3) Advisement of the applicant's right of appeal and the process and time frames for Appeal that is provided in law.

Section C: Plan Review

Plan Requirements:

- (a) The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment, Retail Food Establishment, or Mobile Food Establishment shall submit to the Jefferson County Health Department properly prepared plans and specifications for review and approval before:
 - (1) The construction of a Bed and Breakfast Establishment, Mobile Food Establishment, and/or Retail Food Establishment;
 - (2) The conversion of an existing structure for use as a Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment;
 - or
 - (3) The remodeling of a Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment or a change of type of Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment food operation if the Jefferson County Health Department determines that plans and specifications are necessary to ensure compliance with this section.
- (b) The plans and specifications for a Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment shall include:
 - (1) Type of operation
 - (2) Type of food preparation (as specified in Appendix A of the published version of 410 IAC 7-24) and
 - (3) The menu
- (c) The plans and specifications shall be deemed satisfactory and approved by Jefferson County Health Department before a Permit can be issued.
- (d) A pre-operational inspection shows that the Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this ordinance, 410 IAC 7-24 and/or 410 IAC7-15.5

Plan Review Questionnaire. The owner or other authorized agent of an existing or proposed Bed and Breakfast Establishment, Mobile Food Establishment or Retail Food Establishment shall submit to the Jefferson County Health Department the Plan Review Questionnaire, provided by the Jefferson County Health Department, thirty (30) days prior to the pre-operational inspection.

Content of the Plan Review Questionnaire: The application shall include:

- (a) The name, mailing address, and location of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment;
- (b) A statement specifying whether the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment:
 - 1. If not permanent, is mobile and/or temporary, and
 - 2. The operation includes one (1) or more of the following:

- a. Prepares, offers for sale, or serves potentially hazardous food as defined in 410 IAC 7-24:
 - i. Only to order upon a consumers request;
 - ii. In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency; or
 - iii. Using time, rather than temperature, as the public health control as specified under 410 IAC 7-24.
 - iv. Prepares acidified foods as defined in 410 IAC 7-21-3
 - b. Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing.
 - c. Prepares food as specified under item (2) (b) of this section for the delivery to and consumption at a location off the premises of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment where it is prepared.
 - d. Prepares food as specified under item (2) (b) of this section for service to a highly susceptible population, as defined in 410 IAC 7-24;
 - e. Prepares only food that is not potentially hazardous; or
 - f. Does not prepare, but offers for sale only prepackaged food that is potentially hazardous.
- (c) The name, title, address, telephone number, and signature of the Owner/Operator directly responsible for the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.
- (d) The name of the Person who functions as the immediate supervisor of the Person specified under subdivision (c) of this section, such as the zone, district, or regional supervisor;
- (e) A statement signed by the applicant that
- 1. Attests to the accuracy of the information provided in the application, and
 - 2. Affirms that the applicant will:
 - a. Comply with this Ordinance
 - b. Allow the Jefferson County Health Department access to the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and records as specified in 410 IAC 7-15.5 and 410 IAC 7-24;
- (f) Other information required by the Jefferson County Health Department.

Section D: Permits

General: It is unlawful for a Person to operate any Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment in Jefferson County, without first obtaining a valid Permit from the Health Officer. The valid Permit must be posted in a conspicuous location in the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment.

Only persons who comply with the applicable requirements of 410 IAC 7-15.5 and /or 410 IAC 7-24 will be entitled to obtain and keep a Permit.

A separate Permit shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment operated or to be operated by any Person.

A Permit issued under this ordinance is not transferable.

A Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment permitted by Jefferson County Health Department shall be considered registered.

Anyone not in compliance with 410 IAC 7-15.5 and or 410 IAC 7-24 shall not be issued a permit to operate.

Permit Period: A Permit for a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, shall be issued for a term beginning February 1, and/or before commencement of operation, and expiring January 31, of the next year and shall be applied for by the Person and/or Operator annually.

A Permit for a temporary Food Establishment shall be in conjunction with a single event or celebration, but not to exceed fourteen (14) consecutive days.

Permit Content: Any Permit issued by the Health Officer or his/her duly authorized representative shall contain:

- (a) The name of the Person and/or owner to whom the Permit is granted;
- (b) The name of the establishment for which the Permit is issued;
- (c) The issuance and expiration date(s); and
- (d) Other such pertinent data as may be required by the Jefferson County Health Officer or his/her duly authorized representative.

Qualification: To qualify for a Permit, an applicant must:

- (a) Be an owner and/or Operator of the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment;

- (b) Comply with the requirements of this ordinance;
- (c) Agree to allow access to the Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment, and/or Temporary Food Establishment and provide required information; and
- (d) Pay the applicable Permit fees at the time the application is submitted.

Change of Ownership: The Jefferson County Health Department may renew a Permit for an existing Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment or may issue a Permit to a new owner of an existing Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment after a completed application is submitted, reviewed, and approved, the fees are paid, and a pre-operational inspection shows that the establishment is in compliance with this ordinance.

A Permit issued under this ordinance is not transferable.

Responsibilities of the Operator: Upon acceptance of the Permit issued by the Jefferson County Health Department, the Operator in order to retain the Permit shall:

- (a) Comply with provisions of this ordinance and all laws and rules adopted by reference herein and the conditions of any variances granted by the Indiana State Department of Health;
- (b) Immediately discontinue affected operations and notify the Jefferson County Health Department if an Imminent Health Hazard as defined in 410 IAC 7-24 may exist;
- (c) Allow representatives of the Jefferson County Health Department access to the Bed and Breakfast Establishment, Mobile Food Establishment, Temporary Food Establishment and/or Retail Food Establishment at all reasonable times;
- (d) Comply with directives of the Jefferson County Health Department including time frames for corrective actions specified in Inspection Reports, notices, Orders, warnings, and other directives issued by the Jefferson County Health Department in regard to the Operator's Bed And Breakfast Establishment, Mobile Food Establishment, Temporary Food Establishment and/or Retail Food Establishment or in response to community emergencies;
- (e) Accept notices issued and served by the Jefferson County Health Department; and
- (f) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this ordinance or a directive of the Jefferson County Health Department.
- (g) Post the Permit in a location in the Bed and Breakfast Establishment, Mobile Food Establishment, Temporary Food Establishment, and/or Retail Food Establishment that is conspicuous to consumers;

Section E: Permit Fees

It shall be unlawful for any Person to operate a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment in Jefferson County, who has not paid the Permit fee required for the operation of such establishment. The fee shall be paid for a term beginning February 1, and/or before commencement of operation and expiring January 31, of the next year and shall be applied for by the Person and/or Operator annually. Permit fees for the issuance of a Permit under this Ordinance to a Bed And Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or a Temporary Food Establishment shall be set by the Jefferson County Health Department, as provided by the Statutes of the State of Indiana. (IC 16-20-1-27)

Fees Schedule

Bed and Breakfast Establishment and/or Retail Food Establishment annual permit fees:

One (1) – five (5) employees	\$120.00
Six (6) – ten (10) employees	\$ 200.00
Eleven (11) employees and over	\$ 280.00

Mobile Food Establishment:

- (a) \$180.00 annual fee
- (b) The fee for all temporary events within Jefferson County will be waived.

Commercial Kitchen Registration:

- (a) \$20.00 for each establishment using the kitchen
- (b) Fee will be taken off permit fee if Retail Food Permit is obtained.

Pro Ratio of Fees: In the event that a Retail food, Bed and Breakfast and Mobile Food Establishment shall apply for a permit any time prior to July 1st of any year, they shall be responsible for the total annual fee as described in this section. In the event that a Retail Food, Bed and Breakfast and Mobile Food Establishment shall apply for a permit any time on or after August 1st of any year, they shall be required to pay one half (1/2) of the annual fee. All permits shall expire on January 31, of the following year in which they were issued. **This does not include Temporary Food Establishments.**

Temporary Food Establishments:

- (a) For each event of operation \$50.00
- (b) Three (3) or more events of operation in Jefferson County within the same calendar year \$125.00. Must be paid prior to the first event.

Retail Food Establishments doing Temporary Events:

Should a Retail Food Establishment and/or Bed and Breakfast Establishment elect to do business at a location other than listed on their Retail Permit Application (which only includes the area within the walls of the address) they are subject to the required applications and fees associated with the festival, celebration and/or event.

Receipt of payment: A receipt for the payment of such fee shall be provided by the Jefferson County Health Department.

The payment of such fees shall be required for each Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment operated or to be operated by any Person.

Exemption from Permit Fees: An organization that is exempt from the Indiana Gross Income Tax under Indiana Code 6-2.1-3-20 through 6-2.1-3-22 and offers food for sale to the final consumer at an event held for the benefit of the organization is exempt from the payment of fees. This exemption only applies to organization(s) that meet the criteria addressed in Indiana Code 16-42-5-4, IC 16-18-2-137, SEA 190. The Health Officer or his/her duly authorized representative shall be provided, upon request, proof of an organization's tax exemption.

Non-Profit Organizations: All Non-Profit Organizations that are opened for more than fifteen (15) days of operation per year will be charged a permitting fee based on number of persons employed by establishment.

Retail Food Establishment contracted by Non-Profit Organizations:

Any Retail Food Establishment and/or Bed and Breakfast Establishment preparing food and selling food for a nonprofit entity must submit a Temporary Event Application along with required fees to the Jefferson County Health Department.

IC 16-18-2-137, subsections (b)(5) and (6), addresses events where a for-profit entity may be contracted to provide food for a church, religious, civic, fraternal, veteran, or charitable organization(s). In these situations, the "for-profit entity" would be considered a "food establishment" and the food prepared by the "for-profit entity" would be subject to the applicable laws and rules. This would include instances where an organization asks the "for-profit entity" to prepare food that is supplied by the organization. However, any food prepared and donated by the members of the organization(s) and used at the same event would not be regulated.

Operating without a Permit:

- (a) Failure to renew a Retail Food Establishment, Mobile Food Establishment, and/or Bed and Breakfast Establishment permit after expiration and continuing to operate shall result in a \$500.00 penalty per day of operation without a permit.
- (b) Failure to obtain a permit prior to operation of a Retail Food Establishment, Mobile Food Establishment, Bed and Breakfast Establishment, and/or Temporary Food Establishment shall result in a \$500.00 penalty per day of operation without a permit.

The payment of fees under this ordinance is not transferable or refundable.

Section F: Inspection

Mobile Food Establishment, Retail Food Establishment/Bed and Breakfast Establishment:

The Jefferson County Health Department shall inspect Bed and Breakfast Establishments annually. Retail Food Establishment/ Mobile Food Establishments shall be inspected based on risks to the populations served within the establishment and menu type. Follow-up inspections will be conducted based on results of the routine inspections.

Temporary Food Establishment: The Jefferson County Health Department shall conduct inspections with written food service reports on the initial day of each event. Any event conducted over a period of 5 days or more shall be inspected twice. Follow-up inspections shall be conducted as needed.

All Food Establishments shall not operate prior to first inspection and issuance of permit.

Performance and Risk Based Inspections: Within the parameters specified in the above Inspection Subsection(s) of this Ordinance, the Jefferson County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment's history of compliance with this ordinance and the Bed and Breakfast Establishment, Mobile Food Establishment and/or Retail Food Establishment's potential as a vector of foodborne illness by evaluating:

- (a) Past performance, for violations of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and/or HACCP plan requirements that are critical or non-critical;
- (b) Past performance, for complaints investigated and found to be valid;
- (c) The hazards associated with the particular foods that are prepared, stored, or served;
- (d) The type of operation including the methods and extent of food storage, preparation, and service;
- (e) The number of people served; and
- (f) Whether the population served is a highly susceptible population.

Complaint Inspections: Complaints are received from various sources including consumers, local health departments, other government agencies, the regulated industry, trade associations, etc. Complaints are taken seriously, and all are investigated including those received anonymously. Relevant information is obtained to enable evaluation of the complaint, determination of appropriate follow-up and if possible, sufficient facts to permit follow-up without subsequent contact with the complainant.

Access Allowed at Reasonable Times After Due Notice: After the Jefferson County Health Department presents official credentials and provides notice of the purpose of and the intent to conduct an inspection, the Operator shall allow the Jefferson County Health Department to determine if the Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment, and/or Temporary Food Establishment is in compliance with this ordinance by allowing access to the establishment, allowing inspection, and providing information and records

specified in this ordinance. The Jefferson County Health Department is entitled the information and records according to IC 16-42-1-13 and IC 16-42-5-23, during the Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment's hours of operation and other reasonable times. Access is a condition of the acceptance and retention of a food establishment Permit to operate. If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law. (IC 16-20-1-26)

Inspection Reports: At the conclusion of the inspection, the Jefferson County Health Department shall provide a copy of the completed Inspection Report and the notice to correct violations to the Operator or to the Person-in-charge, as required under IC 16-20-8.

Timely Correction of Critical Violations: Except as specified in the next paragraph, an Operator shall at the time of inspection correct a critical violation of 410 IAC 7-15.5, 410 IAC 7-24 and/or 410 IAC 7-22 and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Jefferson County Health Department may agree to or specify a longer time frame after the inspection, for the Operator to correct critical code violations or HACCP plan deviations. After receiving notification that the Operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the Jefferson County Health Department shall verify correction of the violation, document the information on an Inspection Report, and enter the report in the Jefferson County Health Department's records.

Refusal to Sign Acknowledgement: Refusal to sign an acknowledgment of receipt will not affect the Operator's obligation to correct the violations noted in the Inspection Report within the time frames specified. A refusal to sign an acknowledgment of receipt is noted in the Inspection Report and conveyed to the Jefferson County Health Department historical record for the Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment. The Operator is not necessarily in agreement with the findings of the Jefferson County Health Department inspection by acknowledgement of receipt.

Public Information: Except as specified in Section 194 (Trade Secrets) of 410 IAC 7-24, the Jefferson County Health Department shall treat the Inspection Report as a public document and shall make it available for disclosure to a Person who requests it in writing to the Administrator and/or his/her representative as provided in law. (See IC 16-20-8)

Section G: Compliance and Enforcement

Certification of Food Handler Requirements (410 IAC 7-22)

- (a) A corporation or local health department may not impose any registration, certificate, or licensing requirement on food handling or food handlers.
- (b) After December 31, 2004, at least one (1) food handler at a food establishment must be a certified food handler. A food handler's certification must be recognized by the Conference for Food Protection or an equivalent nationally recognized certification examination as determined by the department.
- (c) A food establishment shall have at least one (1) certified food handler responsible for all periods of the food establishment's operation. However, a certified food handler need not be present at the food establishment during all hours of operation. It shall be the responsibility of the certified food handler to provide the certificate, letter or document for verification of passing the examination.
- (d) A food establishment that begins operation or changes ownership shall comply with section 15(b) of this rule not later than six (6) months after beginning operation or changing ownership.
- (e) If a food establishment does not have a certified food handler because the certified food handler terminates employment with the food establishment, the owner or operator of the food establishment shall comply with section 15(b) of this rule not later than three (3) months after the termination date of the previous certified food handler.
- (f) If more than one (1) food establishment operated by the same individual is located on the same property or on contiguous properties, only one (1) certified food handler is required for the food establishments.
- (g) Except as provided in subsection (h), the certified food handler requirement does not apply to a food establishment when the food establishment's food handling activities are limited solely to one (1) or more of the following:
 - 1. Heating or serving precooked foods
 - 2. Preparing or serving a continental breakfast such as rolls, coffee, juice, milk, and cold cereal.
 - 3. Preparing or serving nonalcoholic or alcoholic beverages that are not potentially hazardous beverages or ice.
 - 4. Preparing or serving packaged or unpackaged foods that are not potentially hazardous foods, such as elephant ears, funnel cakes, cotton candy, confectionaries, baked goods, popcorn, and chips and grinding coffee beans.
 - 5. Providing prepackaged food in its original package
- (h) A food establishment that has more than ten thousand (10,000) square feet in total retail sales space at the food establishment location must comply with this chapter. This does not apply to a pharmacy that is a food establishment that provides only prepackaged food products for sale.
- (i) The certified food handler requirement does not apply to the following institutions:
 - 1. Hospitals licensed under IC 16-21;
 - 2. Health facilities licensed under IC 16-28;
 - 3. Housing with services establishments that are required to file disclosure statements under IC 12-10-15; or

4. Continuing care retirement communities required to file disclosure statements under IC 23-2-4.
5. Community mental health centers (as defined in IC 12-7-2-38)
6. Private mental health institutions licensed under IC 12-25.
7. An area agency on aging designated under IC 12-10-1 that provides food under a nutrition service program. However, the premise where the food is prepared is not exempt from the requirements under this chapter.
8. A food pantry that:
 - a. Is operated or affiliated with a nonprofit organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and
 - b. Distributes food, which may include food from the United States Department of Agriculture, to needy persons.
- (j) A food bank or other facility that distributes donated food to other organizations is not exempt from the requirements of this rule.
- (k) An organization that is exempt from the state gross retail tax under IC 6-2.5-5-21(b)(1)(B), IC 6-2.5-5-21(b)(1)(C), or IC 6-2.5-5-21(b)(1)(D) is exempt from complying with the requirements of this rule.
- (l) This section does not prohibit an exempted organization from waiving the exemption and using a certified food handler.

Permit Suspension/Revocation: The Jefferson County Health Department may suspend or revoke a Permit to operate a Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment if it determines through inspection, or examination of employee, food, records, or other means as specified in this ordinance, that an Imminent Health Hazard, as defined in 410 IAC 7-24, exists. If the Permit has been suspended or revoked in the past and a clear demonstration of noncompliance is demonstrated by the Permit Holder then the Permit may be revoked permanently as determined by the Health Officer.

Ceasing Operation and Contacting the Jefferson County Health Department: An Operator of a Bed and Breakfast Establishment, Retail Food Establishment, Mobile Food Establishment and/or Temporary Food Establishment shall immediately discontinue operations and notify the Jefferson County Health Department if an Imminent Health Hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, septic failure (410 IAC 6-10), misuse of poisonous or toxic materials, onset of an apparent foodborne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health. An Operator need not discontinue operations in an area of an establishment that is unaffected by the Imminent Health Hazard.

Resuming Operation: If a Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment have discontinued operations for the

reasons stated above or otherwise according to law, the Operator must obtain approval from the Jefferson County Health Department before resuming operations.

Outstanding Fees: Any outstanding fees shall be a condition upon which a permit may not be issued or may be suspended or revoked.

Enforcement Options: The following are options available to Jefferson County Health Department for consideration:

- (a) Under consideration of the Administrator and/or Food Safety Inspection Officer(s), establish a process for the issuing of penalties based on violation of the Bed and Breakfast, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment requirements.
- (b) Conduct administrative proceeding for suspension and/or revocation of the Bed and Breakfast Establishment, Mobile Food Establishment, Retail Food Establishment and/or Temporary Food Establishment Permit in front of a Hearing Officer.
- (c) The Jefferson County Health Officer or his/her duly authorized representative may issue an "Order to Abate" based on a condition that may transmit, generate, or promote disease. Failure on the part of the operator to comply with the Order could result in the enforcement of the Order in the court of jurisdiction by the initiation of an action by the Jefferson County Health Department attorney.
- (d) If the action concerning public health is an ordinance violation, request the Jefferson County Health Department attorney to institute a proceeding in the courts for the enforcement of the ordinance violation.
- (e) If the action concerning public health is a criminal offense, request the Jefferson County Health Department attorney to institute a proceeding in the courts for enforcement.

Civil Penalty: The Jefferson County Health Department may commence an action under IC 4-21.5-3-8 to levy civil penalties against a person who:

- (a) Fails to comply with IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24; or
- (b) Interferes with or obstructs the Indiana state department of health or its designated agent in the performance of duties pursuant to IC 16-42-5, 410 IAC 7-21, or 410 IAC 7-24.
 1. A civil penalty in an amount in the appropriate range specified in subsection (d), (e), or any combination thereof, may be sought for each day of each violation.
 2. In determining the seriousness of the violation and the specific amount of the civil penalty to be sought for each violation, the Indiana state department of health will consider, but is not limited to, the following:
 - a. The potential for harm or imminent threat to public health.
 - b. The extent of deviation from statutory or regulatory requirements.
 - c. Degree of willfulness or negligence
 - d. History of noncompliance.
 3. Unless adjusted as provided in subsections (7) and (8), and if penalties are to be assessed to a food establishment, as defined in IC 16-42-5, then they shall be assessed in accordance with the following:

INDIANA CODE (IC 16-42-5) SECTION PENALTY RANGE

IC 16-42-5-6; IC 16-42-5-11; IC 16-42-5-19; IC 16-42-5-21 **\$0 to \$1,000**

IC 16-42-5-7; IC 16-42-5-12; IC 16-42-5-13; IC 16-42-5-14; IC 16-42-5-15; IC 16-42-5-17; IC 16-42-5-8; IC 16-42-5-20 **\$0 to \$500**

IC 16-42-5-8; IC 16-42-5-9; IC 16-42-5-10; IC 16-42-5-16; IC 16-42-5-22 **\$0 to \$100**

4. Unless adjusted as provided in subsections (7) and (8), and if penalties are to be assessed to a retail food establishment, as defined in 410 IAC 7-24, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-24 PENALTY RANGE

107; 121, 129; 139; 142; 165; 171; 182; 269; 376; 423; **\$0-\$500**

108; 109; 110; 111; 114; 117; 120; 137; 141(d); 143; 144; 146; 147; 149; 150; 151; 153; 154; 155; 157; 160; 162; 164; 166; 167; 168; 169; 172; 173; 181(a); 183; 186; 187; 188; 189; 193; 195; 196; 205; 241; 274; 294; 303; 320; 321; 322; 323; 324(a)(1); 325; 329; 334; 336; 337; 339; 343; 344; 350; 357; 375; 77; 415; 437; 438; 439; 440; 441; 442; 443; 444; 445; 446; 447; 448; 450 **\$0-\$250**

113; 115; 118; 123; 128; 131; 132; 135; 136; 141(a); 141(b); 141(c); 152; 156; 190; 191; 201; 204; 229; 240; 259; 264; 295(a); 296; 297; 326; 368; 424; 435; 436 **\$0-\$100**

119; 122; 130; 133; 134; 138; 140; 145; 148; 158; 159; 161; 163; 170; 174; 175; 176; 177; 178; 179; 180; 181(b); 181(c); 185; 197; 198; 199; 202; 203; 206; 207; 208; 209; 210; 211; 212; 213; 214; 215; 216 ; 217; 218; 219; 220; 221; 222; 223; 224; 225; 226; 227; 228; 230; 231; 232; 233; 234; 235; 236; 237; 238; 239; 242; 243; 244; 245; 246; 247; 248; 249; 250; 251; 252; 253; 254; 255; 256; 257; 258; 260; 261; 262; 263; 265; 266; 267; 268; 270; 271; 272; 273; 275; 276; 277; 278; 279; 280; 281; 282; 283; 284; 285; 286; 287; 288; 289; 290; 291; 292; 293; 295(b); 295(c); 298; 301; 302; 304; 305; 306; 307; 308; 309; 310; 311; 312; 313; 314; 315; 316; 317; 318; 324(a)(2); 327; 328; 330; 331; 332; 333; 335; 338; 340; 341; 342; 345; 346; 347; 348; 349; 351; 352; 353; 354; 355; 356; 358; 359; 360; 361; 362; 363; 364; 365; 366; 367; 369; 371; 372; 373; 378; 379; 380; 381; 382; 383; 384; 385; 386; 387; 388; 389; 390; 391; 392; 393; 394; 395; 396; 397; 398; 399; 400; 401; 402; 403; 404; 405; 406; 407; 408; 409; 410; 411; 412; 413; 414; 416; 417; 418; 419; 420; 421; 425; 426; 427; 428; 429; 430; 431; 432; 433; 434; 449; 451 **\$0-\$50**

5. Unless adjusted as provided in subsections (7) and (8), and if penalties are to be assessed to a wholesale food establishment, as defined in 410 IAC 7-21, then they shall be assessed in accordance with the following:

SECTIONS OF 410 IAC 7-21 PENALTY RANGE

35; 36(1); 36(2); 36(3); 36(4); 36(5); 39(b)(8); 40; 41; 42(b); 45(c); 45(n); 45(p); 45(q); 45(r); 46; 7(9)(B); 48; 49(d); 49(e); 50(d) **\$0-\$1,000**

36(8); 37; 38; 39(a); 39(b)(1); 39(b)(2); 39(b)(3); 39(b)(4); 39(b)(5); 39(b)(6); 39(b)(7); 42(a); 42(d); 42(e); 44(i); 45(a); 45(b); 45(d); 45(e); 45(f); 45(g); 45(h); 45(i); 45(j); 45(k); 45(l); 45(m); 45(o); 45(s); 7(2); 47(3); 47(4); 47(5); 47(6); 47(7); 47(9)(A); 47(9)(C); 50(c); 50(f); 51(a); 51(c); 51(d) **\$0-\$500**

36(6); 36(7); 42(c); 43(b); 43(c); 43(d); 44(c); 44(e); 44(h); 47(1); 47(8); 49(a); 49(b); 49(c); 50(b); 51(b) **\$0-\$250**

36(9); 43(a); 43(e); 44(a); 44(b); 44(d); 44(f); 44(g); 45(t); 47(10); 47(11); 47(12); 47(13); 47(14); 47(15) **\$0-\$100**

6. Each individual penalty assessed under subsection (3), (4), or (5) or any combination thereof, will be multiplied by the number of days the particular violation has been documented by the Jefferson County Health Department, or its authorized representative.
7. Penalties for violations documented in two (2) consecutive routine, follow-up or complaint inspections by the Jefferson County Health Department, or its authorized representative, shall be assessed on the basis that the violations have remained uncorrected over the period of time between the two (2) routine, follow-up and/or complaint inspections.
8. *The Jefferson County Health Department, or its authorized representative, may reduce the penalty determined in accordance with subsection (3), (4), or (5) or any combination thereof, if the person found in violation has requested re-inspection and has produced substantive evidence that violation(s) have been corrected. In that case the penalty amount shall be assessed only for the period between initial discovery of the violation and the date of receipt of the request for re-inspection.* The absence of direct harm will not result in assessment of a lower penalty for a violation.
9. Penalties for all violations documented in an inspection or series of inspections at an establishment will be totaled and sought in one (1) cause of action.
10. After filing an action pursuant to IC 4-21.5, and in attempt to resolve violations of IC 16-42-5, 410 IAC 7-24, or 410 IAC 7-21 without resort to a hearing, the Jefferson County Health Department, or its authorized representative, may negotiate and enter into agreed orders. An agreed order may suspend all or part of the civil penalty calculated in accordance with this rule.

Section H: Appeals Section

- (a) Any person(s) aggrieved by Orders issued under the Enforcement Option 1-3 of Section G above shall be entitled to a review of the final Order before a Hearing Officer by filing an administrative written request therefore with the Health Officer (Secretary of the Jefferson County Board of Health Sec IC 16-20-1-10). The written request must be mailed or hand delivered to the Health Officer, (715 Green Road, Madison, IN 47250) and must be received within fifteen (15) days after such final Order is issued.
- (b) Upon the Health Officer receipt of such request, the Hearing Officer shall hear the matter again in an open hearing after at least five (5) days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of court of the jurisdiction. (A shorter period of time may be granted, if requested by either party and agreed upon.)
- (c) The notice of the hearing shall be served upon the Person requesting the review by hand delivering or mailing by Certified Mail the notice to the address listed on the Permit application as the Person's mailing address or such other address, as the Person shall designate in the letter of request to the Health Officer.
- (d) The Hearing Officer establishes the Rules of Procedure and advises the parties prior to the start of the proceedings.
- (e) The Hearing Officer shall make written findings of facts and shall enter its final administrative Order or determination of this matter in writing.
- (f) The administrative Order completes the Administrative Appeals procedure.

Section I: Conflict of Interest

No Jefferson County Official shall conduct himself or herself in a manner that is or could have the appearance of a Conflict of Interest.

Section J: Unconstitutionality Clause

Should any section, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be affected thereby.

Section K: Repeal and Effective Date

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed, and this ordinance shall be in full force and effect thirty (30) days after its adoption and publication as provided by law.

Passed and adopted by the Commissioners of Jefferson County, State of Indiana, on this

9 day of December 2014

Signed

Robert Delapoe
Robert Cook
Robert Cook 12-9-16